2011 IL App (3rd) 100871WC-U

Order filed November 9, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CINDY RELIFORD,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Appellant,	)	Peoria County, Illinois.
	)	
	)	Appeal No. 3-10-0871WC
v.	)	Circuit No. 09-MR-415
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (OSF St. Francis	)	Stephen Kouri,
Medical Center, Appellee).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The claimant failed to establish that her injury arose out of her employment. Therefore, the Commission's denial of benefits is affirmed.

¶ 2 The claimant, Cindy Reliford, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for knee and ankle injuries she claimed to have sustained while working as an employee of respondent OSF St. Francis Medical Center (employer). Following a hearing, an arbitrator found

that the claimant had failed to establish that her accident arose out of and in the course of her employment and denied benefits. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the Commission's decision. This appeal followed.

¶ 3 FACTS

¶ 4 The claimant worked for the employer as a phlebotomist. She worked in a laboratory in the Gerlach Building, which was adjacent to the emergency room parking lot that bordered Berkeley Avenue. The claimant and her coworkers were allowed three breaks during their workday: two paid 15-minute breaks and an unpaid 30-minute lunch break. On July 25, 2007, during one of her paid 15-minute breaks, the claimant slipped and fell while walking across the emergency room parking lot, injuring her right knee and right ankle. Her knee had to be surgically repaired, causing her to miss work for several weeks.

¶ 5 During the arbitration hearing, the claimant testified that she slipped and fell on gravel near the middle of the parking lot. She claimed that the section of the parking lot where she slipped was an "add-on" to the part of the parking lot "from where the helicopter comes." She testified that this section of the parking lot "looked like a quilt" and had been "gone over" so that it was not a single, flat section. Although the claimant suggested that "there was construction going on" in the emergency room parking lot, she did not specifically testify that the portion of the parking lot where she slipped was under construction at the time. Marjorie Hagedorn, who worked with the claimant and who was with her at the time of the accident, testified that the

construction was "off to the north side" of the parking lot. Hagedorn did not testify that construction was being performed in the middle of the parking lot where the claimant slipped and fell. A map of employer's campus that was admitted into evidence showed that construction was being performed in an area north of (and separate from) the emergency room parking lot. It did not identify any construction occurring in the parking lot itself.

¶ 6 Although the claimant admitted that she was a smoker, she claimed that, at the time of the accident, she did not have an intention to smoke. Rather, she claimed that she was "just going out" with her coworker, Marjorie Hagerdorn, who had asked the claimant if she wanted to go outside for a break. The claimant testified that, at the time of the accident, she was aware of the employer's policy banning smoking on hospital property and claimed that "you had to cross the street and get off the property to smoke." She testified that she remained under the control of her employer during her 15-minute paid breaks and that she could have been called back to work at any time during those breaks.

¶ 7 Hagerdorn testified on behalf of the employer. Hagerdorn testified that, on the date of the accident, she and the claimant went outside during their paid break to smoke cigarettes together, which they did "about that time every day." Hagerdorn stated that, after the claimant fell, Hagerdorn helped her up, and the two proceeded to cross Berkeley Avenue, where they smoked the claimant's cigarettes on the adjacent sidewalk. Hagerdorn stated that the employer had informed its employees that they were not allowed to smoke on their paid breaks. She also testified that, in the days preceding the accident (after the employer had instituted a ban on smoking during paid breaks), several other employees routinely crossed Berkeley Avenue to smoke on the adjacent sidewalk. However, Hagerdorn did not know whether those employees

were on a paid break or on their unpaid lunch break at the time. She did not know of any of those employees being reprimanded for smoking in that location or "coached" by management not to do so. Nor was Hagerdorn herself ever reprimanded for smoking on the Berkeley Avenue sidewalk.

¶ 8 The employer's "Tobacco Free Environment" policy became effective on July 4, 2007, three weeks before the claimant's accident. The written policy, which was entered into evidence during the arbitration proceeding, provided, in relevant part, that

> "OSF Saint Francis Medical Center is committed to the promotion of health through the treatment and prevention of disease, and for providing a safe and healthy environment for our physicians, staff, volunteers, visitors, and those we serve. Consistent with this commitment, OSF Saint Francis Medical Center recognizes the adverse health effects of tobacco products and second-hand tobacco smoke. For these reasons, the use of tobacco products in any form (i.e. [*sic*] cigarettes, cigars, chewing tobacco, snuff, pipes, etc.) is prohibited on OSF Saint Francis Medical Center property. This includes land, buildings, parking lots *** [and] *sidewalks adjacent to hospital buildings and parking lots*. ***
>
> *Employees will not be allowed to use tobacco products during their paid work time or paid breaks* ***. Smoke odors at any time are not allowed." (Emphasis added.)

¶ 9 A map of employer's campus posted throughout the hospital showed that the employer's smoking ban extended to the emergency room parking lot and the Berkeley Avenue sidewalk. Moreover, Kathleen Itschner, the employer's Laboratory Director at the time of the claimant's

accident, testified that she sent an e-mail to all laboratory employees—including the claimant—on July 5, 2007, in which she reiterated that employees were not allowed to smoke during paid breaks and expressly noted that smoking was not allowed on the Berkeley Avenue sidewalk. Itschner's e-mail explained that the Berkeley Avenue sidewalk fell within the employer's smoking prohibition because it was a "sidewalk adjacent to hospital property," which the employer's written policy designated as a no smoking area.

¶ 10 Maria Chiras, the claimant's manager at the time of the accident, testified that, some time after July 25, 2007, she learned that the claimant and Hagerdorn were smoking on their paid break. Approximately two weeks after the accident, Chiras had a conversation with the claimant and told her that she could not smoke on paid breaks. Chiras described this conversation as "coaching," which was the first step in the disciplinary procedure instituted by employer.

¶ 11 The arbitrator found that the claimant had failed to prove an accident that arose out of and in the course of her employment. The arbitrator credited Hagerdorn's testimony that she and the claimant left the lab intending to smoke on the date of the accident and expressly found that Hagerdorn's testimony on this issue was more credible that the claimant's assertion that she did not intend to smoke at the time of the accident. The arbitrator concluded that the documentary evidence and the testimony of Hagerdorn and Itschner made it clear that employees were not allowed to smoke during their paid breaks. Moreover, the arbitrator found that the evidence established that smoking on sidewalks adjacent to hospital property—including the Berkeley Avenue sidewalk—was prohibited by the employer's policy.[1] The arbitrator found that the

[1] The arbitrator found that the claimant's suggestion that employees were allowed to smoke during paid breaks if they left the employer's property was "a misstatement" of the

claimant was aware of her employer's no smoking policy but nevertheless "went with a co-worker on break to smoke." The arbitrator therefore found that the claimant's accident occurred while the claimant was "on her way to do something which was prohibited by" her employer. Accordingly, the arbitrator concluded that the claimant "took herself out of the course of her employment when she assumed a personal risk to leave [her employer's property] and smoke." The arbitrator therefore declined to award the claimant any benefits.

¶ 12 The claimant appealed the arbitrator's decision to the Commission. After briefing and argument, the Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Peoria County. Following briefing and oral argument, the circuit court ruled that the Commission's findings were not against the manifest weight of the evidence and confirmed the Commission's decision. This appeal followed.

¶ 13 ANALYSIS

¶ 14 To be compensable under the Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2 (West 2006). The claimant bears the burden of establishing both elements by a preponderance of the evidence. *Vill v. Industrial Comm'n*, 351 Ill. App. 3d 798, 802 (2004). The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). Accidental injuries sustained on an employer's premises or in a parking lot the employer provided for its employees are generally deemed to arise "in the course of" the employment, even if the injuries occur during breaks or within a

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employer's policy.

reasonable time before or after work. *Id.*; see also *Rogers v. Industrial Comm'n,* 83 Ill. 2d 221, 223 (1980); *Cook County v. Industrial Comm'n,* 165 Ill. App. 3d 1005, 1007-08 (1988).

¶ 15 However, the fact that the injury arose in the course of the employment is not sufficient to impose liability; to be compensable, the injury must also "arise out of" the employment. *Caterpillar Tractor Co.,* 129 Ill. 2d at 58; *Cook County,* 165 Ill. App. 3d at 1009. An injury "arises out of" one's employment if "its origin is in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the accidental injury." *Saunders v. Industrial Comm'n,* 189 Ill. 2d 623, 627 (2000); see also *Caterpillar Tractor Co.,* 129 Ill. 2d at 58. A risk is "incidental to the employment" when it "belongs to or is connected with what an employee has to do in fulfilling his duties." *Caterpillar Tractor Co.,* 129 Ill. 2d at 58; see also *Stembridge Builders, Inc. v. Industrial Comm'n,* 263 Ill. App. 3d 878, 880 (1994).

¶ 16 The mere fact that the injury occurred at the claimant's workplace or that the claimant was present at the place of injury because of his employment duties will not by itself suffice to establish that the injury arose out of the employment. *Saunders,* 189 Ill. 2d at 628; *Brady v. Louis Ruffolo & Sons Construction Co.,* 143 Ill. 2d 542, 550 (1991); *Caterpillar Tractor Co.,* 129 Ill. 2d at 61-62; *Wal-Mart Stores, Inc. v. Industrial Comm'n,* 326 Ill. App. 3d 438, 444 (2001). Rather, a claimant must demonstrate that his risk of the injury she sustained was either peculiar to her employment or increased by her employment (*i.e.*, that she was exposed to that risk to a greater degree that the general public by reason of the employment). *Brady,* 143 Ill. 2d at 550; *Karastamatis v. Industrial Comm'n,* 306 Ill. App. 3d 206, 209 (1999). "If the injury results from a hazard to which the employee would have been equally exposed apart from the

employment," or from a risk personal to the employee, it is not compensable. *Caterpillar Tractor Co.*, 129 Ill. 2d at 59; *Brady*, 143 Ill. 2d at 550.

¶ 17 In this case, the claimant failed to establish that her injury "arose out of" her employment. The claimant was injured when she slipped in the emergency room parking lot and fell on her knee. Although the claimant suggested that "there was construction going on" in the emergency room parking lot, she did not specifically testify that the portion of the parking lot where she slipped was under construction at the time or that any such construction contributed to her injury. Nor did she present any evidence suggesting that her injury was caused by a defect or hazard in the parking lot, such as a pothole or crack. Rather, she merely testified that she slipped on a gravel surface that "was not a single, flat section." This testimony merely suggests that she was injured while walking on a gravel surface that was not entirely uniform, a risk that is regularly encountered in daily life by members of the general public. That is not enough to satisfy the claimant's burden of proving that her injury "arose out of" her employment. See, *e.g.*, *Caterpillar Tractor Co.*, 129 Ill. 2d at 61-62 (holding that claimant who sprained his ankle while stepping off a curb on the way to the employee's parking lot failed to establish that his injury "arose out of" his employment where "there [was] nothing in the record to indicate that the curb was either defective or hazardous," and the risks inherent in traversing curbs "confront all members of the public").

¶ 18 Moreover, even assuming *arguendo* that the conditions in the employer's emergency room parking lot caused the claimant's injuries, the claimant still failed to sustain her burden of proof. The claimant did not claim that the emergency room parking lot was reserved for employee parking or that employees were even allowed (much less required) to park there. Nor

did she claim that she was required to take her break in the emergency room parking lot, or that she needed to walk across that parking lot in order to travel to and from work. Rather, the claimant testified that she voluntarily chose to walk in that parking lot during her break. In so doing, she encountered the same risks that any member of the general public who used the emergency room parking lot would encounter. These risks were not in any way increased by the claimant's employment. For this additional reason, the claimant failed to establish that her injuries "arose out of" her employment. *Vill*, 351 Ill. App. 3d at 804 (holding that claimant who was injured when she exited her car in a hospital parking lot used by hospital employees, visitors, and patients failed to establish that her injury arose out of her employment because "the risk of injury that is inherent in the act of exiting a motor vehicle confronts all members of the general public"); *Wal-Mart Stores, Inc.*, 326 Ill. App. 3d at 444 (holding that claimant who slipped on ice in her employer's parking lot which was used by both employees and customers did not prove that her injuries arose from her employment because her fall "resulted from a hazard to which she and the general public were equally exposed").

¶ 19 The Commission found that the claimant's injury did not occur "in the course of her employment" because the claimant was injured while on her way to smoke during her paid break, in violation of the employer's "Tobacco Free Environment" policy. The Commission concluded that the claimant "took herself out of the course of her employment when she assumed a personal risk to leave [her employer's property] and smoke." The Commission's focus on the smoking issue was understandable because the parties framed their arguments around that issue both before the Commission and before this Court on appeal. However, we conclude that the smoking issue is irrelevant because, regardless of whether the claimant was injured while on her

way to smoke, the claimant failed to establish that her injuries "arose out of" her employment. Because the Commission decided the matter based upon the smoking issue, it made no specific findings of fact regarding whether the claimant's injury resulted from the condition of the employer's premises or whether the claimant's employment exposed her to an increased risk of injury. However, our independent review of the record confirms that the claimant failed to make either of these showings. See, *e.g.*, *Caterpillar Tractor Co.*, 129 Ill. 2d at 59-60 (conducting an independent examination of the record where the Commission "made no specific findings of fact" as to whether the injury resulted from the condition of the employer's premises). We "may affirm the Commission's decision if there is any legal basis in the record to support its decision, regardless of the Commission's findings or reasoning." *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 350 (2000); see also *Service Adhesive Co. v. Industrial Comm'n*, 226 Ill. App. 3d 356, 367 (1992). Because the claimant failed to establish that her injury arose out of a risk connected to her employment, we affirm the Commission's decision.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the Peoria County circuit court, which confirmed the Commission's decision.

¶ 22 Affirmed.